

ANNETTE L. HURST (Bar No. 148738)
DANIEL N. KASSABIAN (Bar No. 215249)
HELLER EHRMAN LLP
333 Bush Street
San Francisco, CA 94104-2878
Telephone: +1.415.772.6000
Facsimile: +1.415.772.6268
E-mail: Annette.Hurst@HellerEhrman.com
Daniel.Kassabian@HellerEhrman.com

Attorneys for Plaintiffs
GYM-MARK, INC. and THE GYMBOREE CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GYM-MARK, INC. and
THE GYMBOREE CORPORATION

Plaintiffs,

v.

CHILDREN'S APPAREL NETWORK, LTD.
and MERVYN'S LLC,

Defendants.

Case No.:

3523

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND UNFAIR
COMPETITION**

JURY DEMAND

**CERTIFICATE OF INTERESTED
PARTIES**

Plaintiff Gym-Mark, Inc. ("Gym-Mark") and Plaintiff The Gymboree Corporation ("Gymboree") (collectively "Plaintiffs") complain in this action against Defendant Mervyn's LLC ("Mervyn's") and Defendant Children's Apparel Network, Ltd. ("CAN") (collectively "Defendants") as follows:

PARTIES

1. Plaintiff Gym-Mark is a corporation organized and existing under the laws of the State of California with its principal place of business at 500 Howard Street, San Francisco, California 94105.

Heller
Ehrman LLP

2. Plaintiff Gymboree is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 500 Howard Street, San Francisco, California 94105.

3. Based upon its corporate filings with the California Secretary of State, Defendant Mervyn's is a limited liability company organized and existing under the laws of the State of California with its headquarters located at 22301 Foothill Boulevard, Hayward, California 94541. Mervyn's also is doing business in this District through numerous retail stores located throughout this District.

4. Based upon its corporate filings with the New York Secretary of State, Defendant CAN is a corporation organized and existing under the laws of New York State, with its principal place of business at 77 South First Street, Elizabeth, New Jersey 07206. Based upon the YOUNG HEARTS labels sewn into the infringing goods found in Mervyn's retail stores (as described below) and Plaintiffs' subsequent investigation revealing that the federal trademark registration YOUNG HEARTS is owned by CAN, Plaintiffs allege that CAN transacts with persons within this District and knowingly places articles of clothing into the stream of commerce for sale within this District—in particular, by selling and shipping its goods to Mervyn's, a company headquartered in this District and with stores throughout this District.

JURISDICTION AND VENUE

5. This action is for the infringement of United States copyrights, pursuant to the laws of the United States, 17 U.S.C. § 101 *et seq.*, and for unfair competition in violation of California law. Subject matter jurisdiction for the claim of copyright infringement is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a). Supplemental jurisdiction for the claim of unfair competition is proper in this Court pursuant to 28 U.S.C. § 1367 because it forms part of the same case or controversy as the claim for copyright infringement.

6. General personal jurisdiction over Mervyn's is proper in this District in light of its headquarters in this District, stores within this District, and systematic business

1 activity within the District. Additionally, specific personal jurisdiction over Mervyn's is
2 proper in this District in light of its sales of the infringing articles within the District, and by
3 engaging in unfair competition in this District.

4 7. Specific personal jurisdiction over CAN is proper in this District in light of its
5 business activity with Mervyn's, headquartered within the District, contacts with this
6 District in connection with the sale of the infringing articles to Mervyn's, and knowing
7 harm of Gym-Mark and Gymboree in this District by its knowing placement of the
8 infringing articles into the stream of commerce for sale within this District, and by engaging
9 in unfair competition in this District in connection with the actions described herein.

10 8. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a).

11 INTRADISTRICT ASSIGNMENT

12 9. Because this action is an Intellectual Property Action within the meaning of
13 Civil Local Rule 3-2(c), the action is to be assigned on a district-wide basis.
14

15 FACTUAL BACKGROUND

16 10. Gym-Mark owns United States Copyright Registration No. VAu682-370
17 dated November 18, 2005, titled the "GIRL/BABYGIRL/KIDGIRL SUMMER I FIESTA
18 2006" line, including "FIESTA FLOWERS & CROCHET INSET" and "FIESTA
19 FLOWERS WITH LADYBUGS". FIESTA FLOWERS & CROCHET INSET is an
20 original and appealing fabric pattern for machine crewel embroidery, featuring artful
21 arrangements of red, tangerine-color, and light purple flowers of different shapes and sizes
22 with a green garland of leaves connecting the flowers in the arrangements. FIESTA
23 FLOWERS WITH LADYBUGS is an original and appealing fabric pattern for machine
24 crewel embroidery featuring an artful arrangement of red, tangerine-color, light purple and
25 hibiscus-color flowers, with green leaf and stem accents, and ladybugs with swirling,
26 broken-line trails as a fanciful indicator of the flight of those insects amongst the colorful
27

1 flowers. True and correct copies of Registration No. VAu682-370 and deposits for the
2 same are attached hereto as Exhibit A.

3 11. Gym-Mark authorized the use of FIESTA FLOWERS & CROCHET INSET
4 and FIESTA FLOWERS WITH LADYBUGS by Gymboree, its affiliate and exclusive
5 licensee for these designs, in connection with high-end children's apparel sold under the
6 GYMBOREE® brand. The GYMBOREE® garments depicting the designs were available to
7 the public nationwide throughout the approximately 550 GYMBOREE® stores and on its
8 web site located at <www.gymboree.com> commencing in or about April 2006. Thus,
9 CAN and Mervyn's had access to these designs at least as of that time.

10 12. In or about May 2007, Plaintiffs became aware of the sale by Mervyn's of
11 numerous items of children's apparel manufactured by CAN under the trademark "YOUNG
12 HEARTS" registered to CAN, bearing embroidery designs substantially similar to that of
13 FIESTA FLOWERS & CROCHET INSET and FIESTA FLOWERS WITH LADYBUGS.
14 The designs as depicted on these garments were worked cheaply in comparison to the
15 Gymboree versions because they used less stitching and less precision, and the overall
16 knockoff garments (the "Defendants' Knockoffs"), while also substantially similar to the
17 GYMBOREE® garments, were made of much cheaper fabric and sold at a significantly
18 lower price point than the garments sold by Gymboree.

19 13. As shown in Exhibit B attached hereto, the design on the Defendants'
20 Knockoff is substantially similar to the Plaintiffs' registered work FIESTA FLOWERS &
21 CROCHET INSET. The overall arrangement, colors, shapes, sizes, and placement of the
22 unique, individual flower and garland elements of the embroidery are substantially similar.

23 14. As shown in Exhibit C attached hereto, the design on the Defendants'
24 Knockoff is substantially similar to the Plaintiffs' registered work FIESTA FLOWERS
25 WITH LADYBUGS. The overall arrangement, colors, shapes, relative sizes and placement
26 of the unique, individual flower, leaf, stem, and ladybug elements of the embroidery are
27 substantially similar.

15. As shown in Exhibit D attached hereto, the design on the Defendants' Knockoff is substantially similar to the Plaintiffs' registered work FIESTA FLOWERS WITH LADYBUGS. The overall arrangement, colors, shapes, sizes, and placement of the unique, individual flower, leaf, and ladybug elements of the embroidery are substantially similar.

16. To date, Plaintiffs have discovered at least three of Defendants' Knockoffs, shown in Exhibits B, C, and D; there may well be others. Given the distinctiveness of Gym-Mark's designs, the fact that CAN copied at least two different embroidery designs onto at least three garments, and the fact that Gymboree competes directly with Defendants in the infant and children's clothing market, it is apparent that Defendants have willfully infringed Gym-Mark's designs.

FIRST CLAIM FOR RELIEF

(Copyright Infringement By All Plaintiffs Against All Defendants)

17. Paragraphs 1 through 16 are hereby incorporated by reference.

18. Mervyn's has infringed Gym-Mark's copyright in FIESTA FLOWERS & CROCHET INSET and FIESTA FLOWERS WITH LADYBUGS through the reproduction and/or distribution of substantially similar embroidery designs on its girls' garments sold throughout Mervyn's stores, including those stores found in this District.

19. CAN has infringed Gym-Mark's copyright in FIESTA FLOWERS & CROCHET INSET and FIESTA FLOWERS WITH LADYBUGS through the reproduction and/or distribution of substantially similar embroidery designs. Upon information and belief, CAN manufactured the embroideries and the garments on which they are stitched, and supplied these garments to Mervyn's for sale throughout this District.

20. Upon information and belief, the infringement of Gym-Mark's registered copyrights was willful. In designing Defendants' Knockoffs to compete with Gymboree's garments, CAN had access to FIESTA FLOWERS & CROCHET INSET and FIESTA FLOWERS WITH LADYBUGS. In deciding to carry FIESTA FLOWERS & CROCHET

1 INSET and FIESTA FLOWERS WITH LADYBUGS in its line of clothing, Mervyn's had
2 access to Gymboree's competing garments. The similarity of these highly creative designs,
3 and the use for identical purposes on competing products in the form of children's clothing
4 targeted to children of the same age and sex, give rise to a strong inference of willful
5 infringement.

6 21. Gym-Mark has been damaged by Defendants' willful infringement in a sum
7 to be determined.

8 22. Gymboree, the licensee of FIESTA FLOWERS & CROCHET INSET and
9 FIESTA FLOWERS WITH LADYBUGS, has been damaged by Defendants' willful
10 infringement in a sum to be determined.

11 23. As a direct result of the Defendants' infringement, Plaintiffs have suffered and
12 will continue to suffer irreparable harm, including but not limited to harm to their business
13 reputation and goodwill.

14 24. Plaintiffs are informed and believe and on that basis allege that Defendants
15 threaten to continue their infringing activities, and unless restrained and enjoined, will do
16 so. Plaintiffs' remedy at law is not by itself adequate to compensate them for the harm
17 inflicted and threatened by Defendants.

18
19 **SECOND CLAIM FOR RELIEF**

20 **(Unfair Competition Pursuant To Cal. Bus. & Prof. Code §§ 17200 *et seq.*
21 By Gymboree Against All Defendants)**

22 25. Paragraphs 1 through 16 are hereby incorporated by reference.

23 26. The California Unfair Business Practices Act, Bus. & Prof. Code §§ 17200 *et*
24 *seq.* ("Section 17200"), defines unfair competition as any "unlawful, unfair or fraudulent
25 business act or practice." Section 17200 provides for injunctive relief and restitution to
26 persons harmed by unfair competition.

27 27. Defendants are direct competitors of Gymboree in the market for infants' and
28 young children's apparel.

28. By engaging in the practices described in paragraphs 9 through 16, above, Defendants have engaged, and will continue to engage, in unfair competition as defined by Section 17200. These acts and practices violate Section 17200 in at least the following respects:

(a) Defendants have engaged, and will continue to engage, in the unlawful business act or practice of infringing Gym-Mark's copyrighted embroidery designs, which Gymboree licenses, through CAN's reproduction of substantially similar embroidery designs on Defendants' Knockoffs and Mervyn's distribution of the same throughout its stores;

(b) Defendants have engaged, and will continue to engage, in the unfair business practice of not investing in the creation of their own embroidery designs, or paying for others' designs, in their reproduction and/or distribution of Defendants' Knockoffs, which compete with Gymboree's goods; and

(c) Defendants have engaged, and will continue to engage, in the unlawful, unfair, and fraudulent business practice of reproducing and/or distributing Defendants' Knockoffs, which are cheaper replicas of Gymboree's Girl/BabyGirl/Kidgirl Summer I Fiesta 2006 line of apparel.

29. As a direct result of unfair competition by Defendants, Gymboree has suffered and will continue to suffer irreparable harm, including but not limited to harm to its business reputation and goodwill. Because of Defendants' unlawful, unfair, and fraudulent business acts and practices, once customers learn that Defendants have a practice of pirating the Gymboree apparel with embroidery designs, they will refrain from purchasing Gymboree's more expensive apparel and wait to purchase the knocked-off, less-expensive items of apparel with similar designs that have been reproduced by CAN and sold by Mervyn's.

30. Defendants have been unjustly enriched by its unfair, unlawful and deceptive practices in a sum to be determined.

31. Defendants are presently engaged in unfair competition, and unless immediately restrained and enjoined, will continue to do so. Gymboree's remedy at law is not by itself adequate to compensate them for the harm inflicted and threatened by Defendants.

PRAYER

WHEREAS, Plaintiffs pray for relief as follows:

A. For a judgment pursuant to 17 U.S.C. § 501 that Defendants have infringed Plaintiff's copyright in the work described herein and as reflected in United States Copyright Registration No. VAu682-370;

B. For an entry of preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502 enjoining and restraining Defendants, their offices, directors, agents, servants, employees and all other persons in privity or acting in concert with them from further infringement of Plaintiffs' copyright as described herein and any others;

C. For entry of relief impounding all infringing articles, and destruction thereof, pursuant to 17 U.S.C. § 503;

D. For a finding that the infringement by Defendants was willful, and for an additional award for their willful infringement, pursuant to 17 U.S.C. § 504;

E. For an accounting of all of Defendants' profits attributable to the infringement, including both direct profits and indirect profits in the form of conveyed sales of related items, pursuant to 17 U.S.C. § 504;

F. For an award to Plaintiffs of their actual damages and any additional profits of the infringer, or enhanced statutory damages, whichever is the greatest, pursuant to 17 U.S.C. § 504;

G. For an award of Plaintiffs' attorneys' fees, expenses and costs, pursuant to 17 U.S.C. § 505;

H. For an entry of preliminary and permanent injunctive relief enjoining and restraining Defendants, their officers, directors, agents, servants, employees and all other

1 persons in privity or acting in concert with them from further engaging in unlawful, unfair,
2 and fraudulent business acts and practices, pursuant to Cal. Bus. & Prof. Code § 17203;

3 I. For an award of restitution to Gymboree, pursuant to Cal. Bus. & Prof. Code
4 § 17203;

5 J. For an award to Plaintiffs of such other and further relief as this Court deems
6 just and proper.

7 Dated: July 6, 2007

Respectfully submitted,

HELLER EHRMAN LLP

8
9 By 
10 ANNETTE L. HURST

11 Attorneys for Plaintiffs
12 GYM-MARK, INC. and
13 THE GYMBOREE CORPORATION
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DEMAND FOR JURY TRIAL

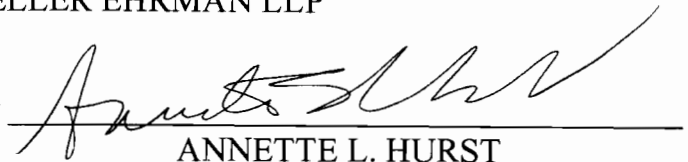
In accordance with Federal Rule of Civil Procedure 38(b), Plaintiff Gym-Mark, Inc. and Plaintiff The Gymboree Corporation demand a trial by jury on all issues triable by a jury.

Dated: July 6, 2007

Respectfully submitted,

HELLER EHRMAN LLP

By


ANNETTE L. HURST

Attorneys for Plaintiffs
GYM-MARK, INC. and
THE GYMBOREE CORPORATION

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

In accordance with Civil Local Rule 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

Plaintiff Gym-Mark, Inc. is wholly owned by Plaintiff The Gymboree Corporation; and Plaintiff The Gymboree Corporation is a publicly traded company, of which more than 10% is owned by FMR Corporation and by Goldman Sachs Asset Management, L.P.

Dated: July 6, 2007

Respectfully submitted,

HELLER EHRMAN LLP

By


ANNETTE L. HURST

Attorneys for Plaintiffs
GYM-MARK, INC. and
THE GYMBOREE CORPORATION

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

FORM VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VAu682-370



EFFECTIVE DATE OF REGISTRATION

Nov 18 2005
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

1

TITLE OF THIS WORK ▼

NATURE OF THIS WORK ▼ See instructions

"GIRL/BABY GIRL/KID GIRL SUMMER I FIESTA 2006" line FABRIC PATTERN

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

2

NAME OF AUTHOR ▼

a GYM-MARK, INC

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

Author's Nationality or Domicile Name of Country

OR Citizen of ► USA Domiciled in ►

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☐ No

Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3 Dimensional sculpture

☐ Map

☐ Technical drawing

☒ 2 Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

NAME OF AUTHOR ▼

b

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

Author's Nationality or Domicile Name of Country

OR Citizen of ► Domiciled in ►

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☐ No

Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2 Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

3

Year in Which Creation of This Work Was

Completed

2005

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month ► Day ► Year ►

Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

GYM-MARK, INC
500 HOWARD STREET
SAN FRANCISCO, CA 94105

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

NOV 18 2005

ONE DEPOSIT RECEIVED

NOV 18 2005

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ►

Complete all applicable spaces (numbers 5-9) on the reverse side of this page. See detailed instructions. Sign the form at line 5.

DO NOT WRITE HERE

Page 1 of 4 pages

EXAMINED BY <u>[Signature]</u>	FORM VA
CHECKED BY <u>[Signature]</u>	
<input type="checkbox"/> CORRESPONDENCE Yes	FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work, complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates ▼

b. Material Added to This Work Give a brief general statement of the material that has been added to this work and in which copyright is claimed ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

GYMBOREE CORPORATIONDA 078743**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼Gym-Mark, Inc
500 Howard Street
San Francisco, CA 94105Attn: Kimberly MacMillan
Area Code and daytime telephone number ▶ 415 278 7228

Fax number ▶ 415 278 7562

Email ▶ kimberly.macmillan@gymboree.com**CERTIFICATION** I, the undersigned, hereby certify that I am the

check only one ▶

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent ofGYM-MARK, INC
Name of author or other copyright claimant, or owner of exclusive right(s) A

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date

KIMBERLY MACMILLANDate ▶ 11/16/05

Handwritten signature (X) ▼

☒ Kimberly MacMillan/mmlCertificate
will be
mailed in
window
envelope
to this
address

Name ▼	<u>Kimberly MacMillan</u> <u>GYM-MARK, INC</u>
Number/Street/Apt ▼	<u>500 HOWARD STREET</u>
City/State/ZIP ▼	<u>SAN FRANCISCO, CA 94105</u>

Complete all necessary spaces
Sign your application in space 31. Application form
2. Nonrefundable filing fee in check or money As of July 1, 2006,
the filing fee for
Form VA is \$38.
3. Deposit materialLibrary of Congress
Copyright Office
101 Independence Avenue, S E
Washington, D C, 20540-6000

CONTINUATION SHEET FOR APPLICATION FORMS

FORM VAU/CON
UNITED STATES COPYRIGHT OFFICE

VAU 682-370



PA PAU SE SEG SEU SR SRU TX TXU VA VAU

EFFECTIVE DATE OF REGISTRATION

Nov 18 2005
(Month) (Day) (Year)

CONTINUATION SHEET RECEIVED

Page 3 of 4 pages

- This Continuation Sheet is used in conjunction with Forms CA, PA, SE, SR, TX, and VA, only. Indicate which basic form you are continuing in the space in the upper right-hand corner.
- If at all possible, try to fit the information called for into the spaces provided on the basic form.
- If you do not have enough space for all the information you need to give on the basic form, use this Continuation Sheet and submit it with the basic form.
- If you submit this Continuation Sheet, clip (do not tape or staple) it to the basic form and fold the two together before submitting them.
- Space A of this sheet is intended to identify the basic application.
- Space B is a continuation of Space 2 on the basic application. Space B is not applicable to Short Forms.
- Space C (on the reverse side of this sheet) is for the continuation of Spaces 1, 4, or 6 on the basic application or for the continuation of Space 1 on any of the three Short Forms PA, TX, or VA.

DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

IDENTIFICATION OF CONTINUATION SHEET This sheet is a continuation of the application for copyright registration on the basic form submitted for the following work:

- **TITLE.** (Give the title as given under the heading "Title of this Work" in Space 1 of the basic form.)

A
Identification
of
Application

"GIRL/BABY GIRL/KID GIRL SUMMER FIESTA 2006" Live

- **NAME(S) AND ADDRESS(ES) OF COPYRIGHT CLAIMANT(S)** (Give the name and address of at least one copyright claimant as given in Space 4 of the basic form or Space 2 of any of the

GYM-MARK, INC.

500 Howard Street

San Francisco

NAME OF AUTHOR ▼

California 94105

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

B
Continuation
of Space 2

Was this contribution to the work
a "work made for hire"?

- ☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of ►
Domiciled in ►

**WAS THIS AUTHOR'S CONTRIBUTION TO
THE WORK**

Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either
of these questions is
"Yes," see detailed
instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by the author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

e

Was this contribution to the work
a "work made for hire"?

- ☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of ►
Domiciled in ►

**WAS THIS AUTHOR'S CONTRIBUTION TO
THE WORK**

Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either
of these questions is
"Yes," see detailed
instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by the author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

f

Was this contribution to the work
a "work made for hire"?

- ☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of ►
Domiciled in ►

**WAS THIS AUTHOR'S CONTRIBUTION TO
THE WORK**

Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either
of these questions is
"Yes," see detailed
instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by the author in which copyright is claimed. ▼

Use the reverse side of this sheet if you need more space for continuation of Spaces 1, 4, or 6 of the basic form or for the continuation of Space 1 on any of the Short Forms PA, TX, or VA.

CONTINUATION OF (Check which):

☒ Space 1☐ Space 4☐ Space 6**C**Continuation
of other
Spaces

LARGE VIESTA FLORAL (A1471-1)
 CROCHET FIESTA FLOWERS
 FIESTA FLOWERS W/LADYBUGS
 FIESTA
 CREWEL FIESTA FLOWER VINE
 FIESTA BOUQUET W/LADYBUGS
 SMALL FIESTA FLORAL (A1467-1)
 FIESTA FLOWERS & B CROCHET INSET
 FIESTA LADYBUG
 LITTLE LADY FIESTA FLOWER
 FIESTA CROCHET FLOWER & EMBROIDERY
 FIESTA FLOWERS WITH LADYBUGS

certificate
 (B) be
 filed in
 indow
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 dress

Name ▼	Kimberly MacMillan
Number/Street/Apt	THE GYMBORE CORPORATION 500 Howard Street
City/State/ZIP ▼	San Francisco California 94105

VERIFICATION
 Complete all necessary spaces
 Sign your application

RECEIVED
 1 Application form
 2 Nonrefundable fee in check or
 money order payable to Register
 of Copyrights
 3 Deposit Material

SEND TO
 Library of Congress, Copyright Office
 101 Independence Avenue, S.E.
 Washington, D.C. 20540-0000

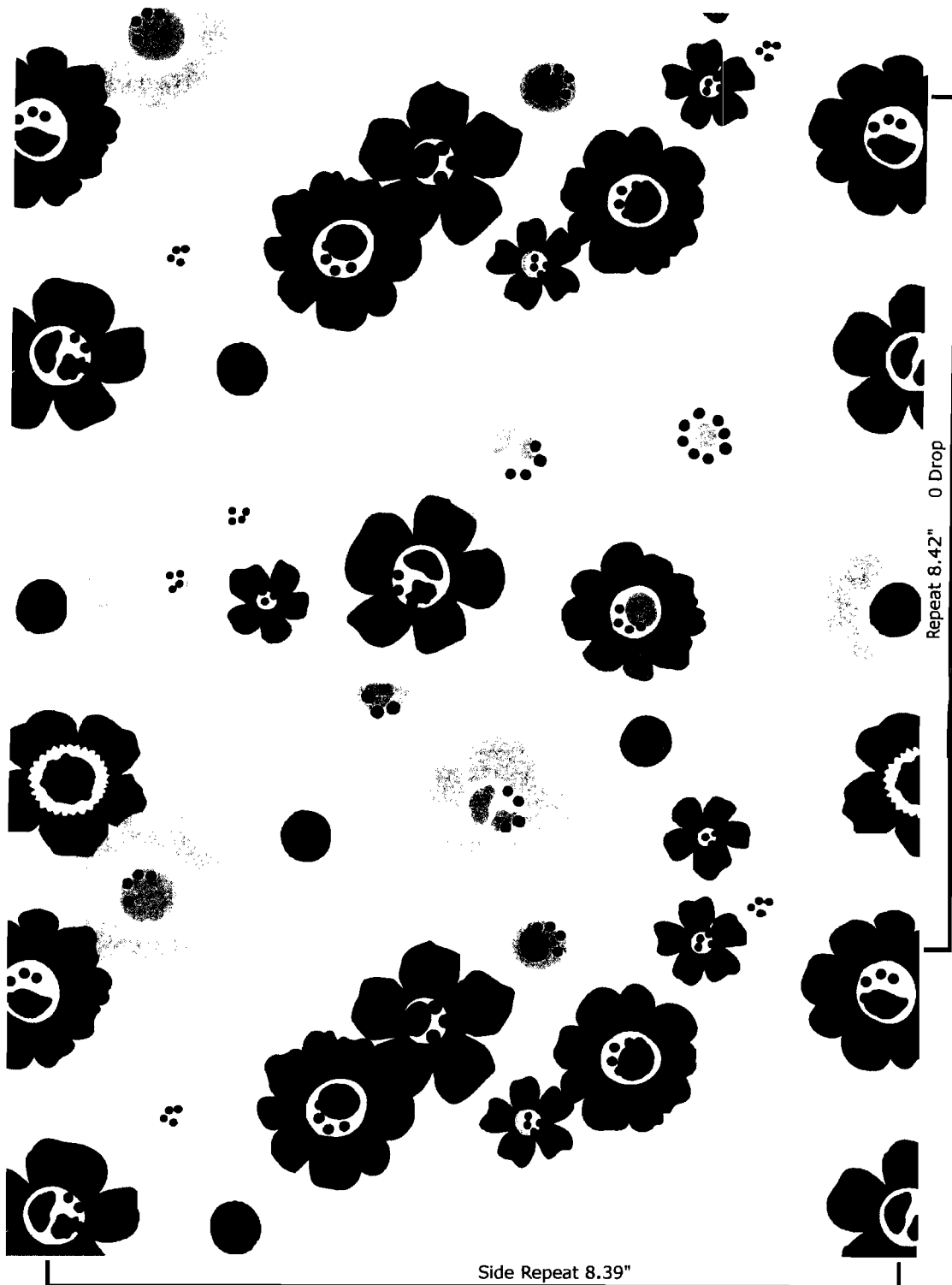
D

Fees are subject to
 change. For current
 fees, check the
 Copyright Office
 website at
 www.copyright.gov,
 write the Copyright
 Office, or call
 (202) 707-6000.

A1471-1
 Large Fiesta Floral - Lil Snow
 Girl/Baby Girl Summer 2006 Delivery

KNIT/WOVEN

7/1/05



GROUND								
Lil Snow	Jubilee Red	Buff Orange	Forest Shade	Very Berry	Tangerine	Hibiscus Cooler	Flamingo	Black

BG06-SMR1-013

BABY GIRL: SUMMER 1 2006

MACHINE EMBROIDERY AND CROCHET/FLOWERS
REF# BG21147

Fiesta

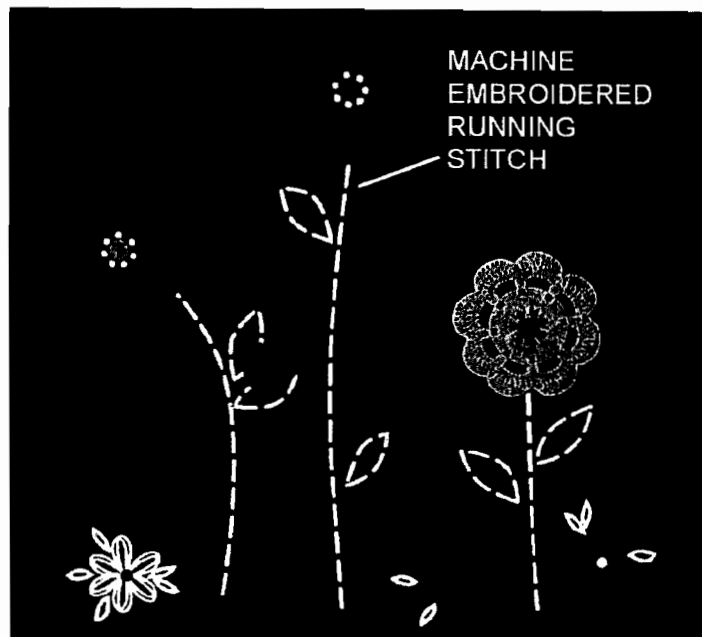
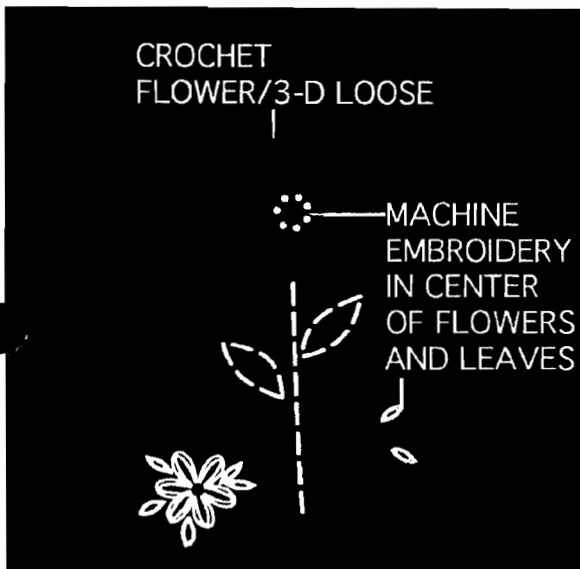
9/26/05. REMOVED BACK A/W
~~8/11/05. ADD LADY BUGS TO A/W~~
7/18/05

12-18 MOS.

PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

LEFT SHORT LEG/FRONT

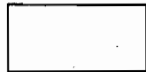
DENIM GROUND
RIGHT SHORT LEG/FRONT



GROUND



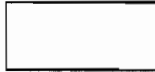
DENIM



Tangerine



Jubilee
Red



Buff
Orange



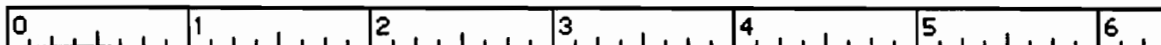
Forest
Shade



VERY
BERRY

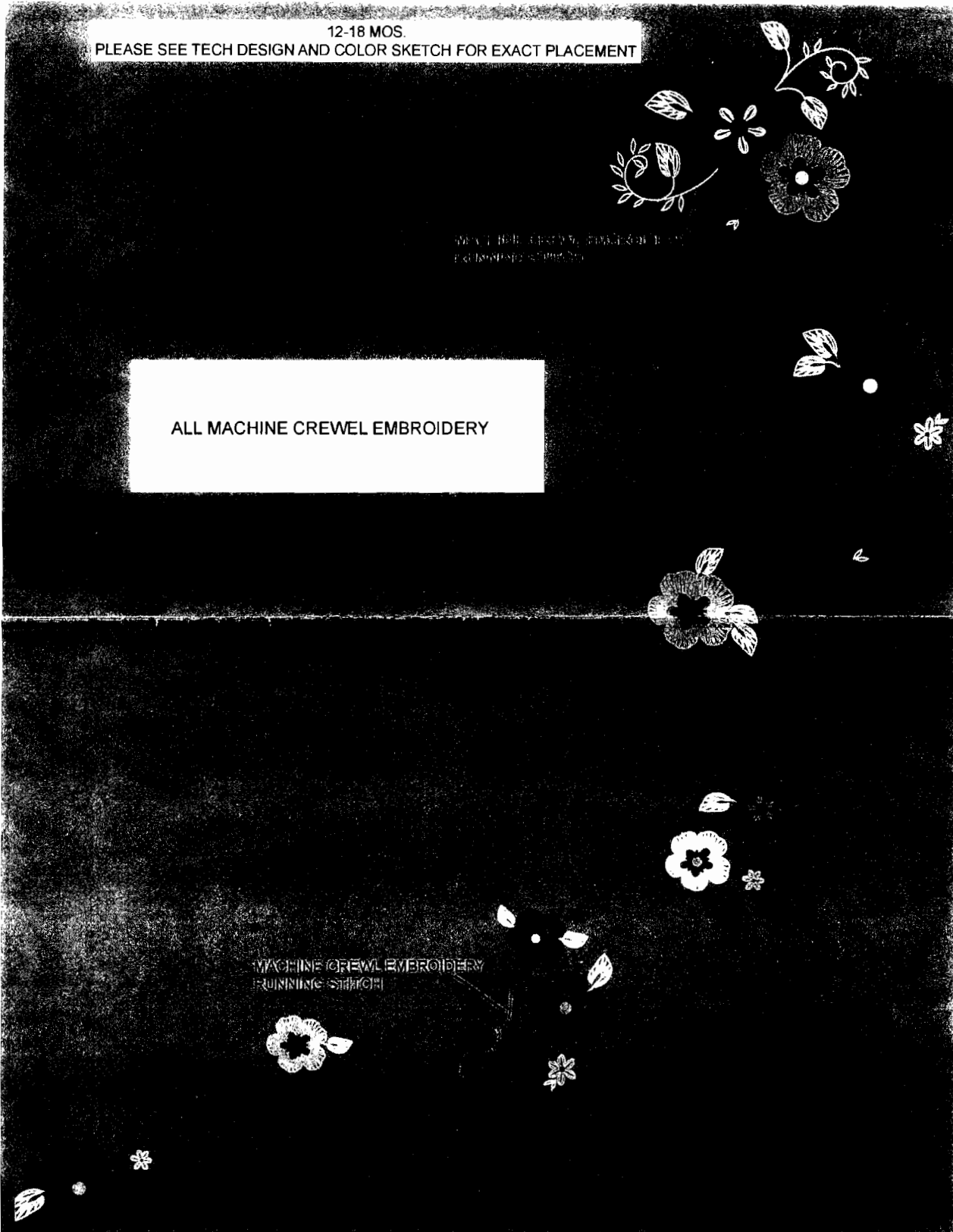


BLACK

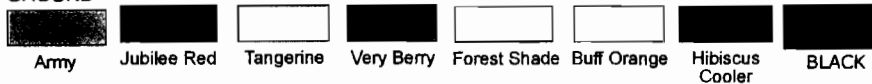


BG06-SMR1-020 FIESTA FLOWERS W/LADYBUGS
 MACHINE CREWEL EMBROIDERY
 BABY GIRL - SUMMER 1 2006 DELIVERY
 REF# BG71086
 STYLE#

LATE ADD 9/27/05



GROUND



G06-SMR1-010 *FIESTA*
 KID GIRL:SUMMER 1 2006
 LASER CUT RIBBON APPLIQUE/MACHINE EMBROIDERY/BUTTON
 REF# 12314
 STYLE #
 8/10/05 ~~7/18/05~~
 REVISED
 BUTTON COLOR
 3-4 YEARS
 PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT






MACHINE EMBROIDERED
 RUNNING STITCH _____

ALL LETTER:
 LASER CUT SATIN RIBBON
 T13021 APPLIED
 TACKED DOWN
 WITH
 MACHINE EMBROIDERED
 RUNNING STITCH

FAUX
 18L WOOD
 FLOWER
 BUTTON
 B32017

fiesta

GROUND

	Lil Snow		VERY BERRY		Tangerine		Jubilee Red		Buff Orange
---	-------------	---	---------------	--	-----------	---	----------------	---	----------------

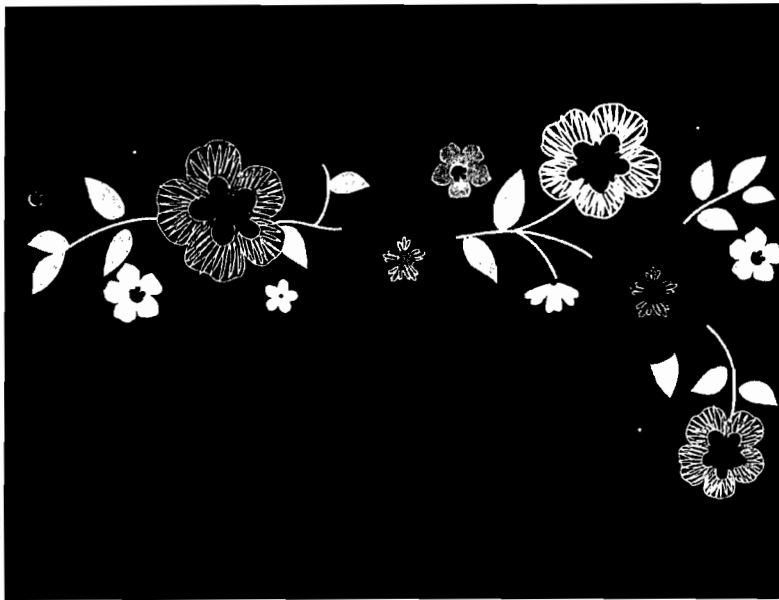
0 1 2 3 4 5 6

G06-SMR1-011 / *FIESTA Flower Vine*
 MACHINE CREWEL EMBROIDERY/3-D CROCHET APPLIQUE FLOWERS/SEQUINS
 GIRL - SUMMER 1 2006 DELIVERY
 REF# 21771
 STYLE#

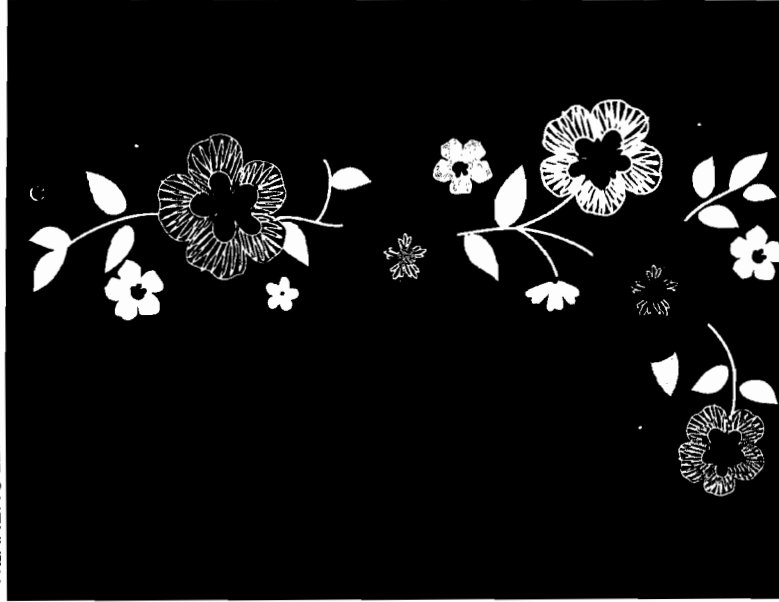
9/27/05 REVISED AW
 7/18/05

3-4 YEARS.
 PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

WEARER'S LEFT



WEARER'S LEFT



ALL MACHINE CREWEL EMBROIDERY

GROUND

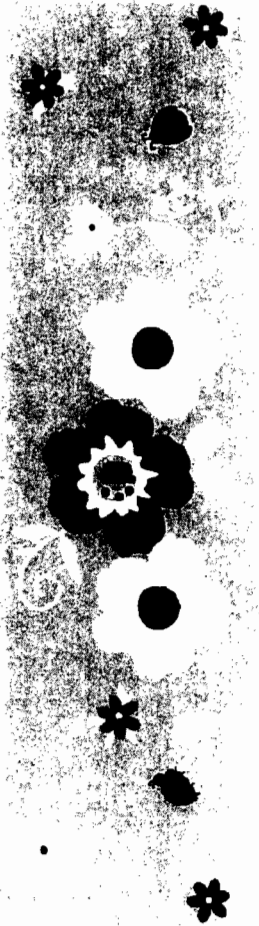
Black	Forest Shade	Hibiscus Cooler	Buff Orange	Jubilee Red	Very Berry	Tangerine
0	1	2	3	4	5	6

BG06-SMR1-014 *Fiesta Banquet w/ Lady Bugs*
 MACHINE CREWEL EMBROIDERY
 BABY GIRL - SUMMER 1 2006 DELIVERY
 REF# BG40581
 STYLE#
 9/27/05: REVISED A/W
 9/26/05: CHANGED A/W
 -8/10/05
 -7/27/05: REVISED BUTTON CODE
 7/18/05

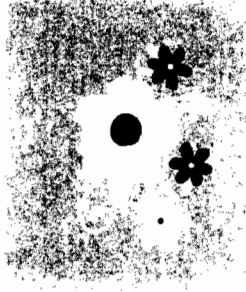
12-18 MOS.

PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

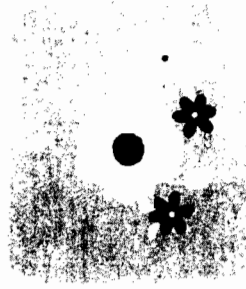
FRONT



RIGHT LEG



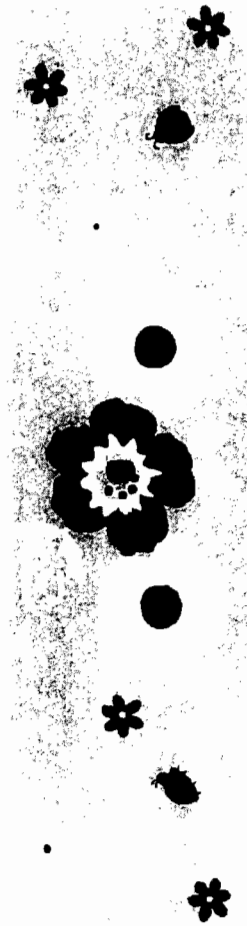
LEFT LEG



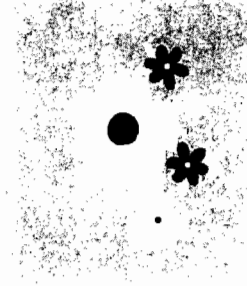
CALLOUTS

ALL MACHINE CREWEL EMBROIDERY

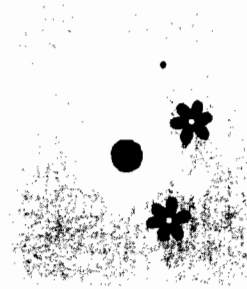
FRONT



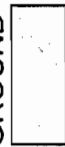
RIGHT LEG



LEFT LEG



GROUND



Buff Orange



Jubilee Red



Tangerine



Very Berry



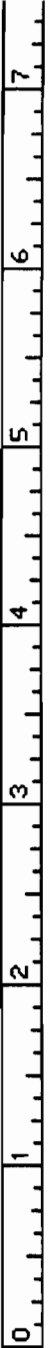
Forest Shade



Lil Snow



Hibiscus Cooler



KNIT

7/1/05

A1467-1

Small Fiesta Floral - Black

Girl/Baby Girl Summer 2006 Delivery



Repeat 3.6" 0 Drop

Side Repeat 3.6"

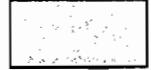
GROUND



Black

Lil
SnowJubilee
RedBuff
OrangeForest
Shade

Very Berry



Tangerine

Hibiscus
Cooler

Flamingo

Blackberry
Stain

G06-SMR1-015
 MACHINE EMBROIDERY CROCHET INSET
 GIRL/BABY GIRL - SUMMER 1 2006 DELIVERY
 REF# 12323/BG11456 LIKE-STYLE
 STYLE#

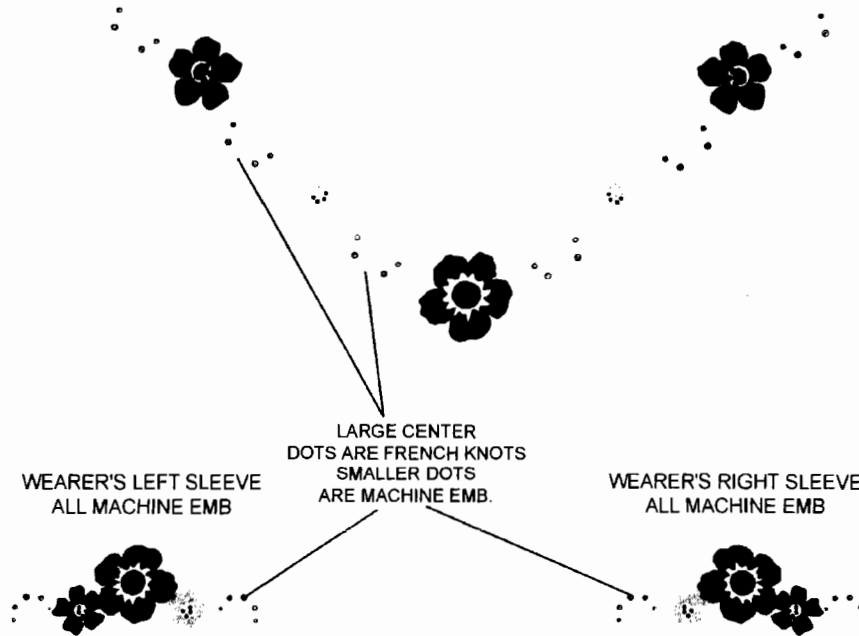
7/18/05

Fiest Flowers

3-4 YEARS.

PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

PLACEMENT AT NECKLINE
 ALL MACHINE CREWEL EMBROIDERY



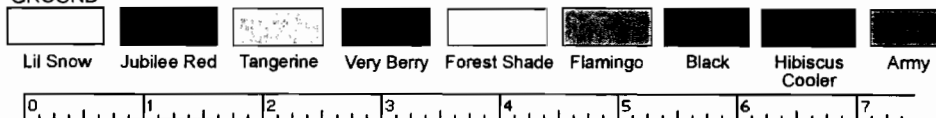
CROCHET INSET - ALL CROCHET

REPEAT 1.3"

WIDTH 1.5"

THIS COLOR
 REPRESENTS
 LIL SNOW

GROUND

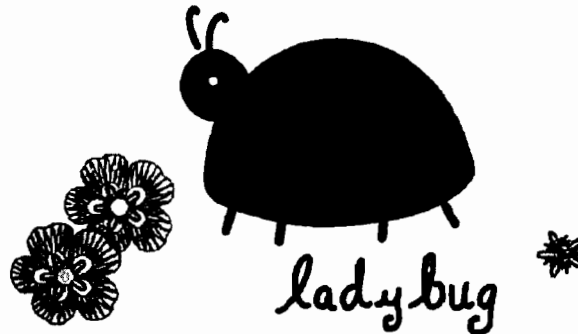


BG06-SMR1-003 *FIESTA LADYBUG*
 MACHINE EMBROIDERY/APPLIQUE
 BABY GIRL - SUMMER 1 2006 DELIVERY
 REF# BG11447
 STYLE#

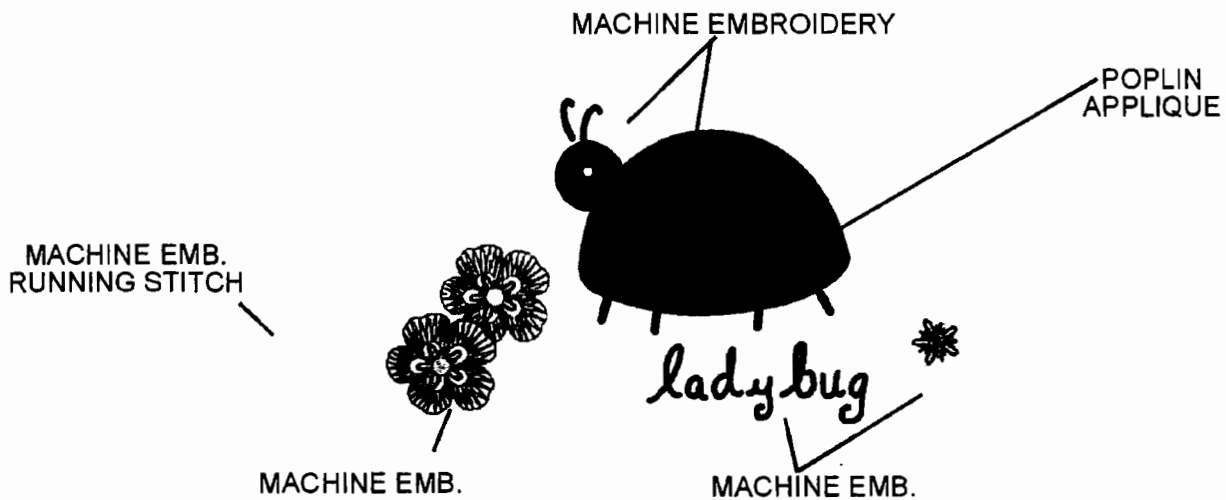
9/26/05 Changed Crochet to
 Emb ~~7/18/05~~

12-18 MOS.

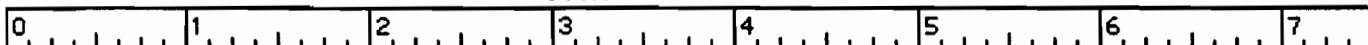
PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT



CALLOUTS



GROUND



LITTLE LADY FIESTA FLOWER

BG06-SMR1-005

BABY GIRL: SUMMER 1 2006

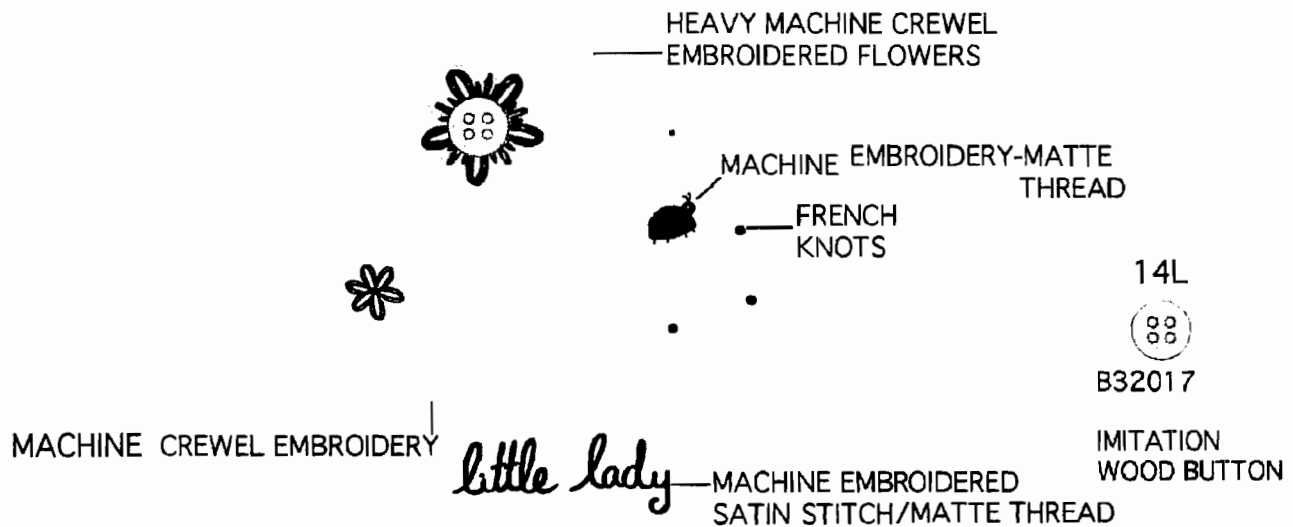
7/18/05

HEAVY MACHINE CREWEL EMBROIDERY/BUTTON/SATIN STITCH

REF# BG11452

12-18 MOS.

PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT



GROUND



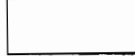
LIL
SNOW



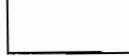
Tangerine



Jubilee
Red



Buff
Orange



Forest
Shade



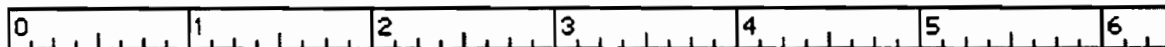
VERY
BERRY



HIBISCUS
COOLER



BLACK



FIESTA CROCHET FLOWER & EMBROIDERY

BG06-SMR1-002

BABYGIRL:SUMMER 1 2006

3D CROCHET FLOWER / MACHINE EMBROIDERY

REF#BG11446

STYLE #

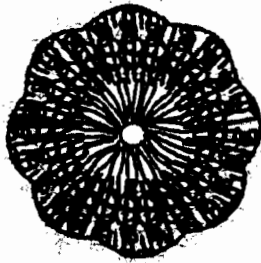
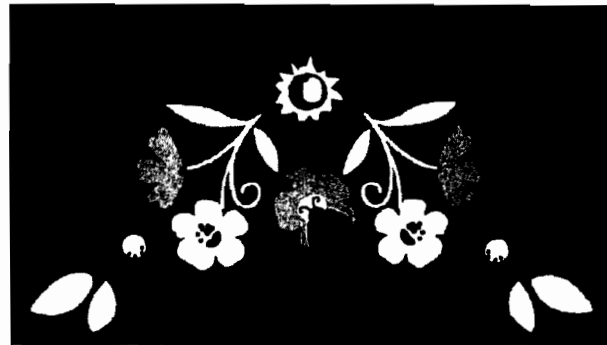
~~9/27/05: REVISED AAW TECHNIQUE~~

9/29/05

~~7/18/05~~revised crochet dangle colors ~~8/10/05~~~~ADDED LADYBUG TO EMB.~~

12-18 MOS.

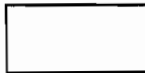
PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

LOOSE
3-D CROCHET FLOWERPLACEMENT AT STRAPS
TACKED DOWN WITH
MACHINE EMBROIDERY
IN CENTERALL FLOWERS
ALL MACHINE CREWEL EMBROIDERY

GROUND



VERY BERRY

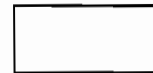


BUFF

ORANGE



Tangerine

Jubilee
RedForest
Shade

BLACK



PIESTA FLOWERS WITH LADYBUGS

BG06-SMR1-006
MACHINE CREWEL EMBROIDERY
BABY GIRL - SUMMER 1 2006 DELIVERY
REF# BG21139
STYLE#

9/27/05: REVISED AWW TECHNIQUE
9/26/05 CHANGE DANGLES TO MACH EMB.
~~8/31/05 revise art reduce embroidery~~
~~8/12/05: ADDED LADYBUG DANGLES~~
~~8/11/05: REVISED AWW - ADDED LADYBUGS~~
~~7/48/05~~

ATTACH DANGLES TO TIES ON GARMENT

12-18 MOS.
PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

ALL MACHINE CREWEL EMBROIDERY

3-D MACHINE EMB.

REPEAT

GROUND									
Buff Orange	Jubilee Red	Tangerine	Very Berry	Forest Shade	Lil Snow	Hibiscus Cooler	Black		
0	1	2	3	4	5	6			

EXHIBIT B

EXHIBIT B

Defendants' knockoff



Gymboree garment
with Gym-Mark design



EXHIBIT B (continued)

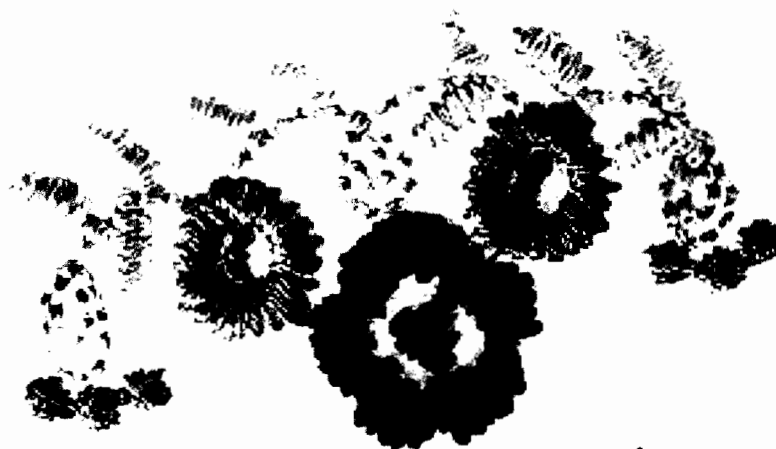
**Defendants' knockoff
(close-up of neckline)**

**Gym-Mark design
(close-up of neckline)**

EXHIBIT B (continued)



**Gym-Mark design
(close-up of sleeve)**



**Defendants' knockoff
(close-up of sleeve)**

EXHIBIT C

EXHIBIT C

Defendants'
knockoff

Gymboree garment
with Gym-Mark designs



EXHIBIT C (continued)

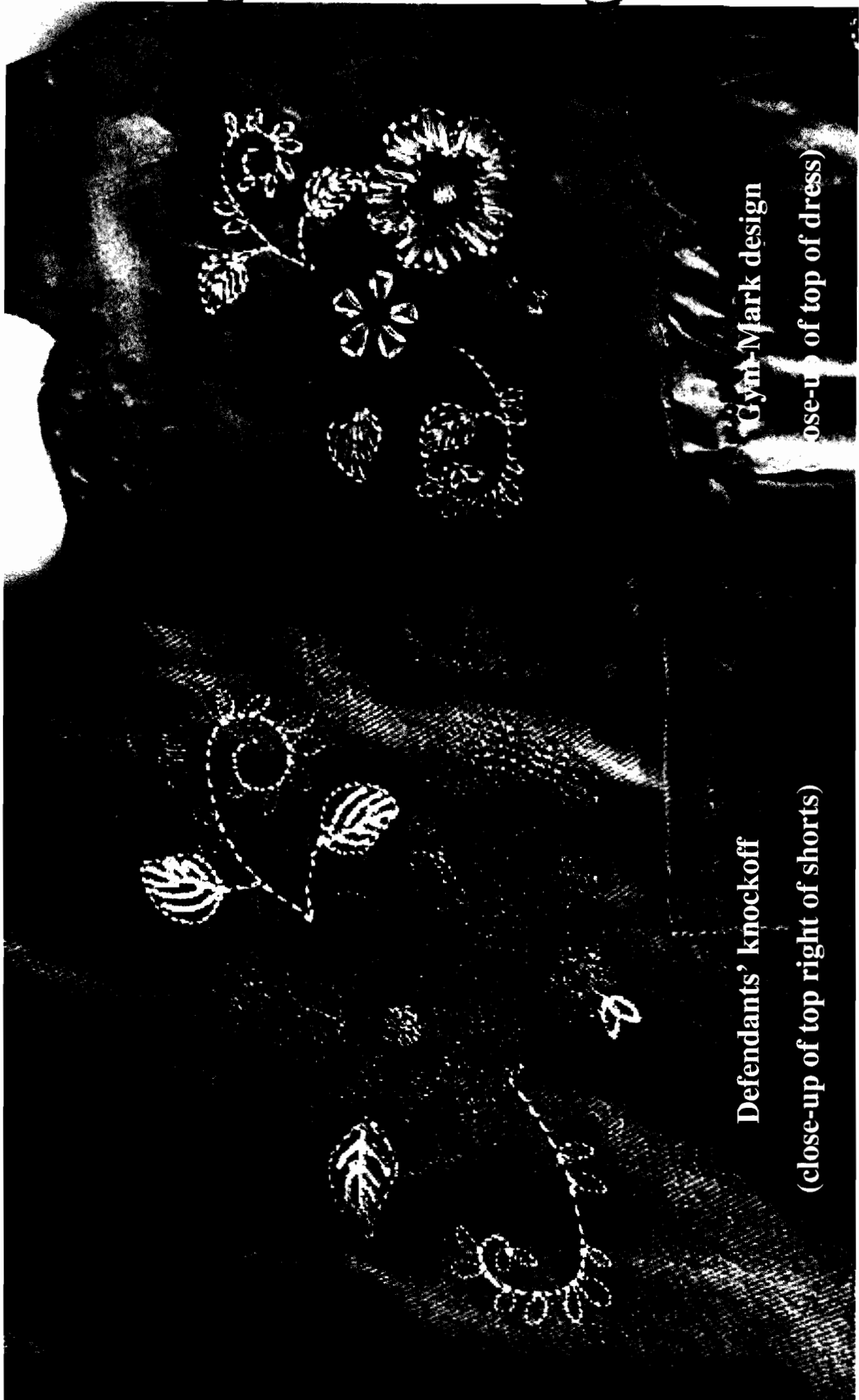


EXHIBIT C (continued)

Defendants' knockoff

(close-up of bottom left of shorts)

Gym-Mark design

(close-up of bottom middle of dress)

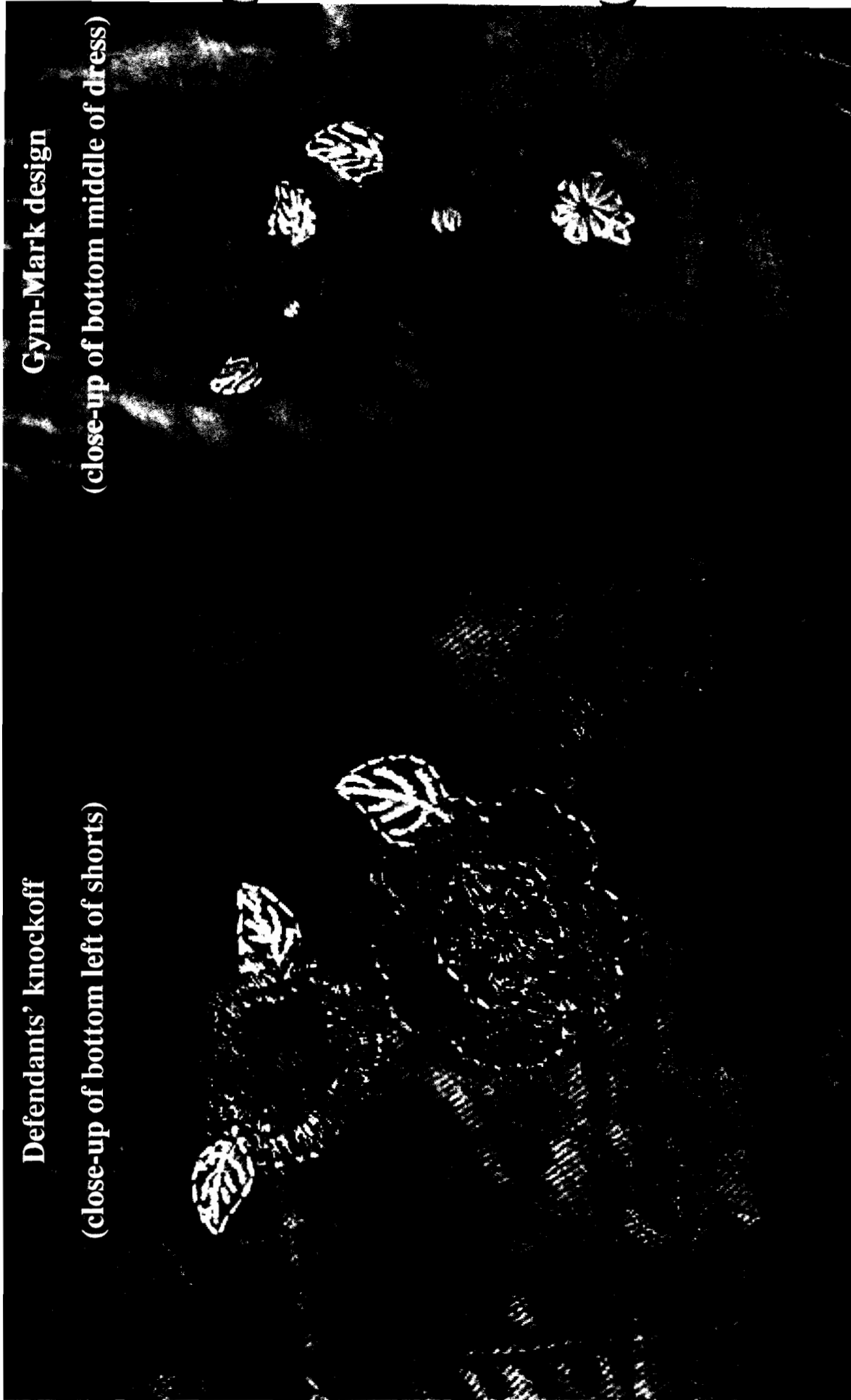


EXHIBIT D

EXHIBIT D

**Defendants'
knockoff**

**Gymboree garment
with Gym-Mark designs**

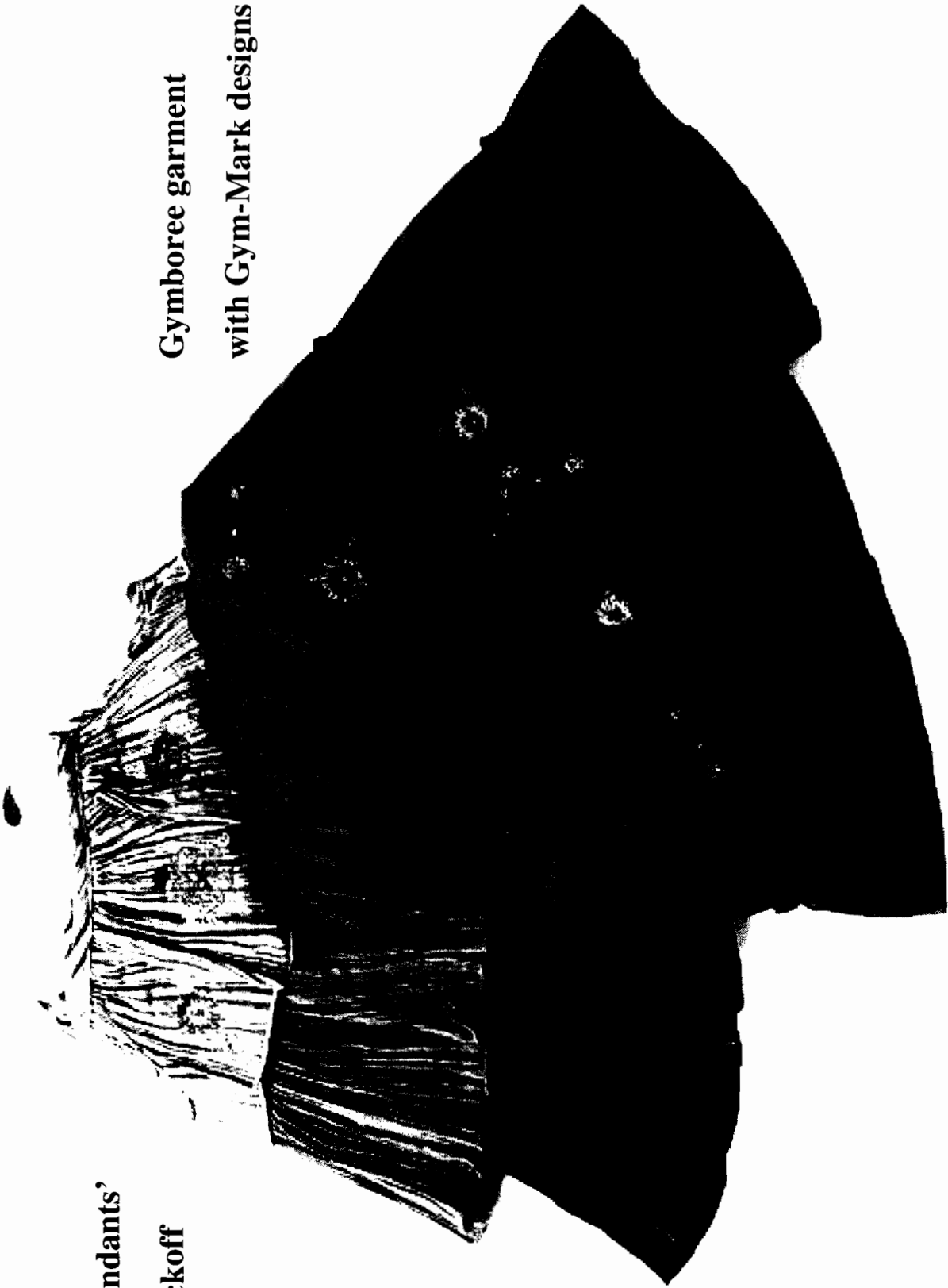


EXHIBIT D (continued)

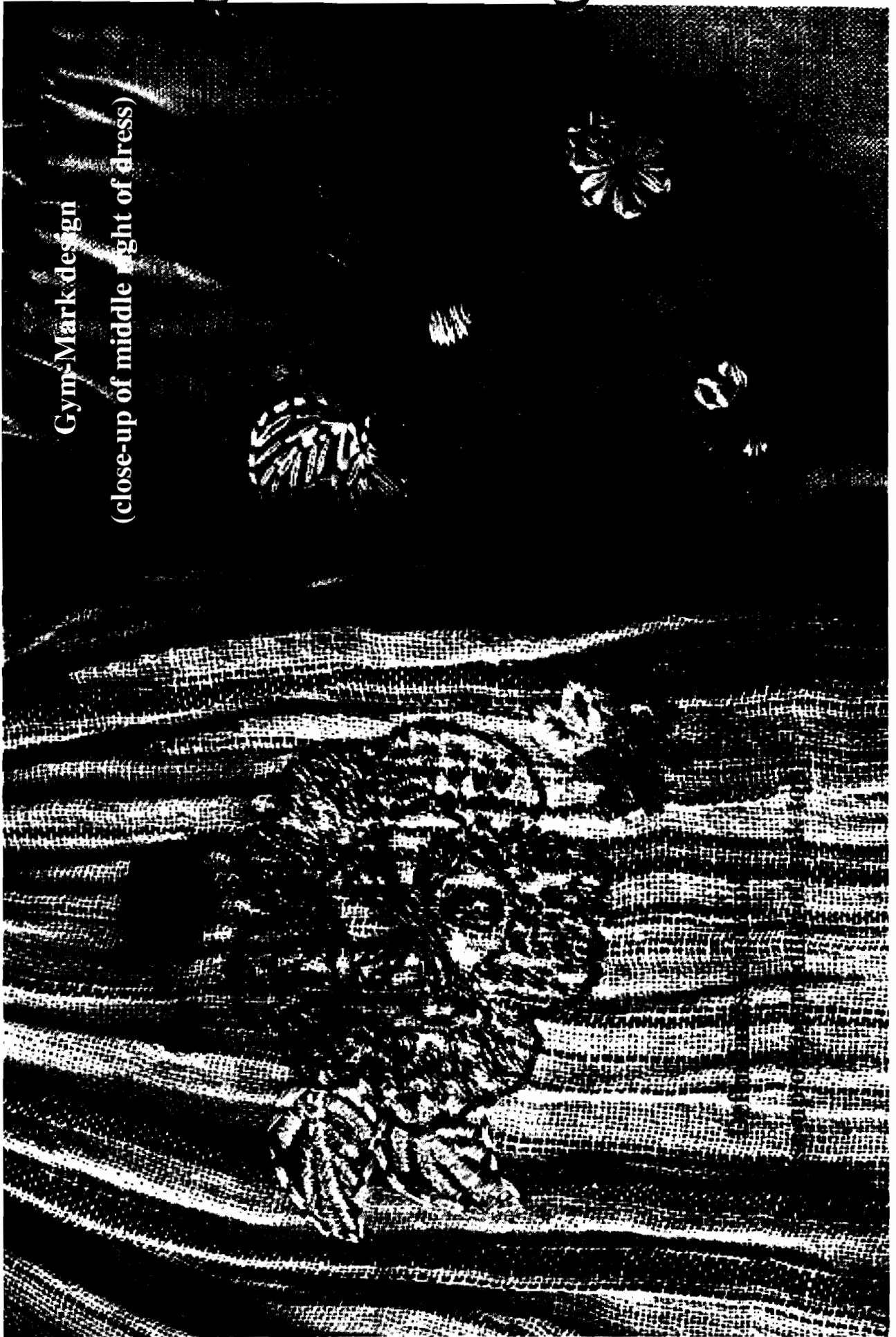


EXHIBIT D (continued)

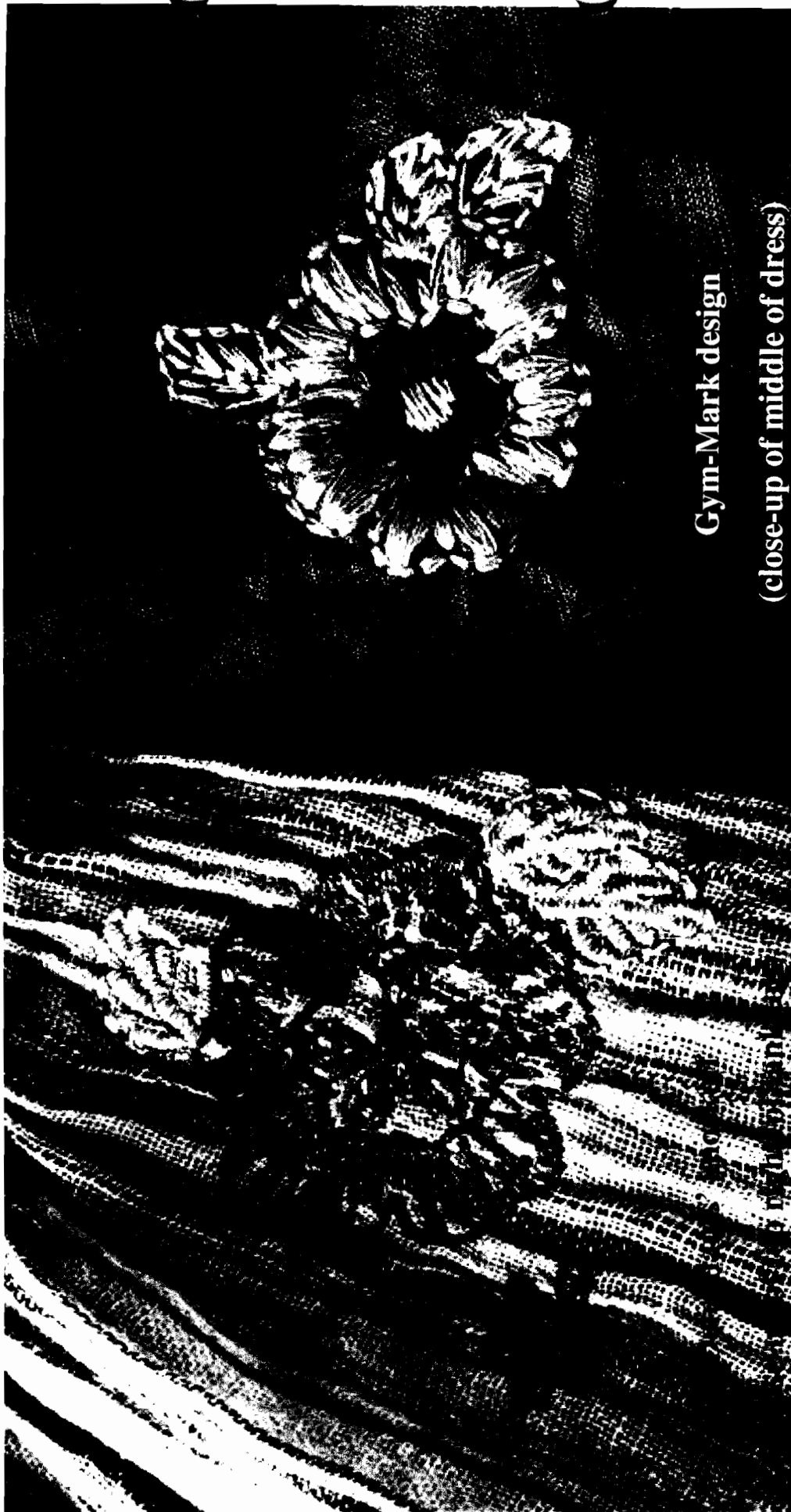
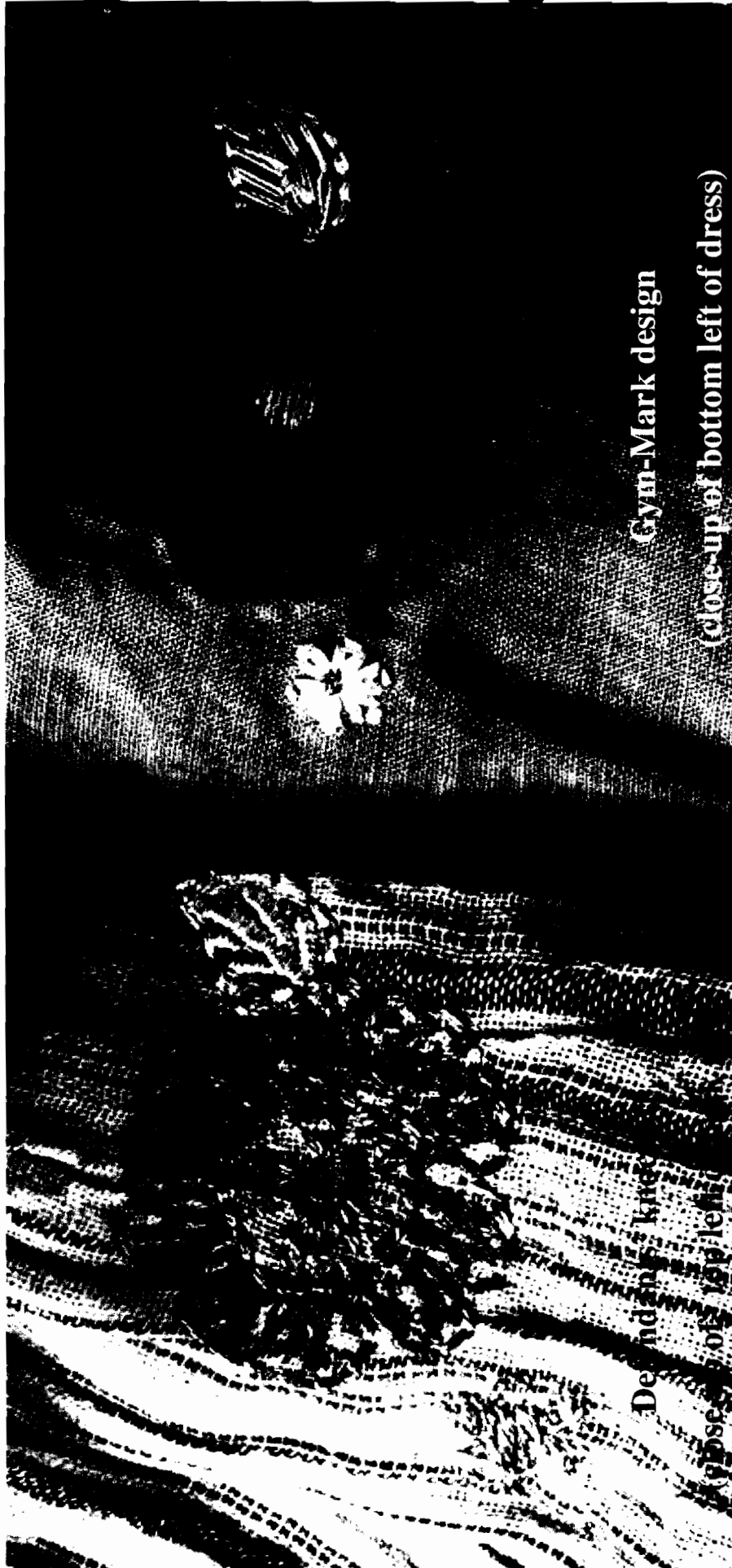


EXHIBIT D (continued)



Gym-Mark design

(close-up of bottom left of dress)

Defendant's knee

(close-up of top left)